

HOUSE BILL 972

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CF SB 688

By: **Delegate Feldman**

Introduced and read first time: February 12, 2010

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: March 17, 2010

CHAPTER _____

1 AN ACT concerning

2 **Maryland General Corporation Law – Miscellaneous Provisions**

3 FOR the purpose of altering the manner in which certain charter documents of certain
4 business entities must be executed by authorizing certain officers, agents, and
5 persons acting in a certain capacity to sign, acknowledge, witness, and attest
6 the documents and to verify certain matters and facts; clarifying that a
7 corporation may provide by its charter that holders of one or more classes or
8 series of stock have certain voting rights under certain circumstances; clarifying
9 that certain authority of a corporation to provide by its charter for classes of
10 stock and certain rights, restrictions, and preferences of classes of stock applies
11 to series of stock; altering the circumstances under which the board of directors
12 of a corporation may effect a certain reverse stock split; expanding the authority
13 of the board of directors of a corporation to delegate to certain committees
14 powers of the board relating to the authorization of dividends on stock and other
15 distributions; repealing certain unnecessary provisions of law relating to the
16 time at which a stockholder of a corporation or a shareholder of a real estate
17 investment trust who proposes a certain nominee or matter for consideration at
18 a meeting of the stockholders or shareholders may be required to provide
19 certain notice; altering the circumstances under which certain notice given by a
20 corporation by a single notice to all stockholders who share an address is
21 effective; providing that, prior to being convened, a meeting of stockholders may
22 be postponed from time to time to a certain date; altering the contents of a
23 certain notice of a proposed charter amendment that a corporation must give to
24 certain stockholders; exempting corporations that have a class of securities
25 registered under a certain federal law from the application of certain provisions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 of law relating to the dissolution of a corporation; clarifying that certain
 2 restrictions on voting rights apply to the holders of certain shares and not to the
 3 shares; making conforming and stylistic changes; and generally relating to
 4 corporations and other business entities.

5 BY repealing and reenacting, with amendments,
 6 Article – Corporations and Associations
 7 Section 1–301(a), 2–105(a), 2–309(d) and (e), 2–411(a), 2–504(f), 2–504.1,
 8 2–511(d), 2–604, 3–413, and 3–702(a)
 9 Annotated Code of Maryland
 10 (2007 Replacement Volume and 2009 Supplement)

11 BY repealing and reenacting, without amendments,
 12 Article – Corporations and Associations
 13 Section 8–601.1
 14 Annotated Code of Maryland
 15 (2007 Replacement Volume and 2009 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Corporations and Associations**

19 1–301.

20 (a) Articles supplementary and articles of amendment, restatement,
 21 [restatement and] amendment **AND RESTATEMENT**, consolidation, merger, share
 22 exchange, transfer, and extension and, except as provided in § 3–406(b) of this article,
 23 articles of dissolution shall be executed as follows:

24 (1) They shall be signed and acknowledged for each corporation,
 25 business trust, or real estate investment trust party to the articles, by its chairman or
 26 vice chairman of the board of directors or board of trustees, **BY** its chief executive
 27 officer, chief operating officer, **CHIEF FINANCIAL OFFICER**, [president] **PRESIDENT**,
 28 or one of its vice presidents, **OR, IF AUTHORIZED BY THE BYLAWS OR RESOLUTION**
 29 **OF THE BOARD OF DIRECTORS OR BOARD OF TRUSTEES AND THE ARTICLES SO**
 30 **STATE, BY ANY OTHER OFFICER OR AGENT OF THE CORPORATION, BUSINESS**
 31 **TRUST, OR REAL ESTATE INVESTMENT TRUST;**

32 (2) They shall be witnessed or attested by the secretary, **TREASURER**,
 33 **CHIEF FINANCIAL OFFICER, ASSISTANT TREASURER**, or [an] assistant secretary of
 34 each corporation, business trust, or real estate investment trust party to the articles,
 35 or, if authorized by the bylaws or resolution of the board of directors or board of
 36 trustees and the articles so state, by any other officer or agent of the corporation,
 37 business trust, or real estate investment trust;

1 (3) They shall be signed and acknowledged for each other entity party
2 to the articles by a majority of the entire board of trustees or other governing body **OR**
3 **BY A PERSON ACTING IN A SIMILAR CAPACITY FOR THE ENTITY AS AN OFFICER**
4 **DESCRIBED IN ITEM (1) OF THIS SUBSECTION;** and

5 (4) Except as provided in subsection (b) of this section, the matters
6 and facts set forth in the articles with respect to authorization and approval shall be
7 verified under oath as follows:

8 (i) With respect to any Maryland corporation, business trust, or
9 real estate investment trust party to the articles, by the chairman or the secretary of
10 the meeting at which the articles or transaction were approved, **[or]** by the chairman
11 or vice chairman of the board of directors or board of trustees, **BY THE** chief executive
12 officer, chief operating officer, **CHIEF FINANCIAL OFFICER**, president, vice president,
13 secretary, or assistant secretary of the corporation, business trust, or real estate
14 investment trust, **OR, IF AUTHORIZED IN ACCORDANCE WITH ITEM (1) OF THIS**
15 **SUBSECTION AND THE ARTICLES SO STATE, BY ANY OTHER OFFICER OR AGENT**
16 **OF THE CORPORATION, BUSINESS TRUST, OR REAL ESTATE INVESTMENT TRUST;**

17 (ii) With respect to any foreign corporation party to articles of
18 consolidation, merger, or share exchange, by the chief executive officer, chief operating
19 officer, president, vice president, secretary, or assistant secretary of the corporation;
20 and

21 (iii) With respect to any other Maryland or foreign entity party
22 to the articles, by the chief executive officer, chief operating officer, president, vice
23 president, secretary, assistant secretary, managing trustee, or persons acting in a
24 similar position for the entity.

25 2-105.

26 (a) A corporation may provide by its charter:

27 (1) For one or more classes **OR SERIES** of stock, the voting rights of
28 each class **OR SERIES**, and any restriction on or denial of these rights;

29 **(2) THAT THE HOLDERS OF ONE OR MORE CLASSES OR SERIES OF**
30 **STOCK HAVE EXCLUSIVE VOTING RIGHTS ON A CHARTER AMENDMENT THAT**
31 **WOULD ALTER ONLY THE CONTRACT RIGHTS, AS EXPRESSLY SET FORTH IN THE**
32 **CHARTER, OF THE SPECIFIED CLASS OR SERIES OF STOCK;**

33 **[(2)] (3)** As to each class **OR SERIES** of stock, either the par value of
34 the shares or that the shares are without par value;

1 ~~[(3)]~~ **(4)** (i) That the corporation shall set apart dividends for or
2 pay dividends to the holders of a specified class **OR SERIES** of stock before any
3 dividends are set apart for or paid to the holders of another class **OR SERIES** of stock;

4 (ii) The rate, amount, and time of payment of the dividends; and

5 (iii) Whether the dividends are cumulative, cumulative to a
6 limited extent, or noncumulative;

7 ~~[(4)]~~ **(5)** That any specified class **OR SERIES** of stock is preferred
8 over another class **OR SERIES** as to its distributive share of the assets on voluntary or
9 involuntary liquidation of the corporation and the amount of the preference;

10 ~~[(5)]~~ **(6)** That any specified class **OR SERIES** of stock may be
11 redeemed at the option of the corporation or of the holders of the stock and the terms
12 and conditions of redemption, including the time and price of redemption;

13 ~~[(6)]~~ **(7)** That any specified class **OR SERIES** of stock is convertible
14 into shares of stock of one or more other classes **OR SERIES** and the terms and
15 conditions of conversion;

16 ~~[(7)]~~ **(8)** That the holders of any specified securities issued or to be
17 issued by the corporation have any voting or other rights which, by law, are or may be
18 conferred on stockholders;

19 ~~[(8)]~~ **(9)** For any other preferences, rights, restrictions, including
20 restrictions on transferability, and qualifications not inconsistent with law;

21 ~~[(9)]~~ **(10)** That the board of directors may classify or reclassify any
22 unissued stock from time to time by setting or changing the preferences, conversion or
23 other rights, voting powers, restrictions, limitations as to dividends, qualifications, or
24 terms or conditions of redemption of the stock;

25 ~~[(10)]~~ **(11)** (i) For any grant to the holders of the stock of the
26 corporation, including a specified class or series of stock, of the preemptive right to
27 subscribe to:

28 1. Any or all additional issues of the stock; or

29 2. Any securities of the corporation convertible into
30 additional issues of stock; or

31 (ii) For any definition or limitation of the preemptive rights of
32 stockholders to acquire additional stock or securities in the corporation;

1 [(11)] **(12)** For restrictions on transferability or ownership for any
2 purpose, including restrictions designed to permit a corporation to qualify as:

3 (i) A real estate investment trust under the Internal Revenue
4 Code or regulations adopted under the Internal Revenue Code; or

5 (ii) An investment company under the Investment Company Act
6 of 1940 or regulations adopted under the Investment Company Act of 1940; and

7 [(12)] **(13)** That the board of directors, with the approval of a majority
8 of the entire board, and without action by the stockholders, may amend the charter to
9 increase or decrease the aggregate number of shares of stock of the corporation or the
10 number of shares of stock of any class **OR SERIES** that the corporation has authority
11 to issue.

12 2–309.

13 (d) If the board of directors of a corporation has given general authorization
14 for a distribution and provides for or establishes a method or procedure for
15 determining the maximum amount of the distribution, the board may delegate to [a
16 committee of the board or] an officer of the corporation the power, in accordance with
17 the general authorization, to fix the amount and other terms of the distribution.

18 (e) (1) This subsection applies to a corporation:

19 (i) With a class of equity securities registered under the
20 Securities Exchange Act of 1934; or

21 (ii) Registered as an open–end investment company under the
22 Investment Company Act of 1940.

23 (2) Unless [the charter of a corporation provides otherwise]
24 **PROHIBITED BY THE CHARTER OF A CORPORATION BY REFERENCE TO THIS**
25 **SUBSECTION OR THE SUBJECT MATTER OF THIS SUBSECTION**, the board of
26 directors of the corporation may amend the charter, with the approval of a majority of
27 the board of directors and without stockholder action, to effect a reverse stock split
28 that results in a combination of shares of stock at a ratio of not more than 10 shares of
29 stock into one share of stock in any 12–month period.

30 (3) Within 20 days after the effective date of the reverse stock split,
31 the corporation shall give written notice of the reverse stock split to each holder of
32 record of the combined shares of stock as of the effective date.

33 2–411.

34 (a) The board of directors of a corporation may:

1 (1) Appoint from among its members an executive committee and
2 other committees composed of one or more directors; and

3 (2) Delegate to these committees any of the powers of the board of
4 directors, except the power to:

5 (i) [Authorize dividends on stock, except as provided in §
6 2-309(d) of this title;

7 (ii)] Issue stock other than as provided in subsection (b) of this
8 section;

9 [(iii)] (II) Recommend to the stockholders any action which
10 requires stockholder approval, other than the election of directors;

11 [(iv)] (III) Amend the bylaws; or

12 [(v)] (IV) Approve any merger or share exchange which does
13 not require stockholder approval.

14 2-504.

15 (f) The charter or bylaws may require any stockholder proposing a nominee
16 for election as a director or any other matter for consideration at a meeting of the
17 stockholders to provide advance notice of the nomination or proposal to the corporation
18 **BEFORE A DATE OR WITHIN A PERIOD OF TIME** [of not more than:

19 (1) 90 days before the date of the meeting; or

20 (2) In the case of an annual meeting, 90 days before the first
21 anniversary of:

22 (i) The mailing date of the notice of the preceding year's annual
23 meeting; or

24 (ii) The preceding year's annual meeting; or

25 (3) Another time] specified in the charter or bylaws.

26 2-504.1.

27 (a) Subject to § 2-504(d) of this subtitle, any notice given by a corporation to
28 a stockholder under this article or the charter or bylaws of the corporation is effective
29 if given by a single notice, in writing or by electronic transmission, to all stockholders
30 who share an address **UNLESS THE CORPORATION HAS RECEIVED A REQUEST**
31 **FROM A STOCKHOLDER IN WRITING OR BY ELECTRONIC TRANSMISSION THAT A**
32 **SINGLE NOTICE NOT BE GIVEN** [if:

1 (1) The corporation gives notice, in writing or by electronic
2 transmission, to the stockholder of its intent to give a single notice; and

3 (2) The stockholder:

4 (i) Consents to receiving a single notice; or

5 (ii) Fails to object in writing within 60 days after the
6 corporation gives notice to the stockholder of its intent to give a single notice.

7 (b) A stockholder may revoke consent given under subsection (a) of this
8 section, whether affirmative or implied, by written notice to the corporation].

9 **[(c)] (B)** This section does not limit the manner in which a corporation
10 otherwise may give notice to stockholders.

11 2-511.

12 (d) **(1)** A meeting of stockholders convened on the date for which it was
13 called may be adjourned from time to time without further notice to a date not more
14 than 120 days after the original record date.

15 **(2) PRIOR TO BEING CONVENED, A MEETING OF STOCKHOLDERS**
16 **MAY BE POSTPONED FROM TIME TO TIME TO A DATE NOT MORE THAN 120 DAYS**
17 **AFTER THE ORIGINAL RECORD DATE.**

18 2-604.

19 (a) This section does not apply to a charter amendment by the board of
20 directors in accordance with § [2-105(a)(12)] **2-105(A)(13)** or § 2-309(e) of this title.

21 (b) If there is any stock outstanding or subscribed for and entitled to be voted
22 on the charter amendment, it shall be approved as provided in this section.

23 (c) Except as provided in § 2-112 of this title, the board of directors of a
24 corporation proposing a charter amendment shall:

25 (1) Adopt a resolution which sets forth the proposed amendment and
26 declares that it is advisable; and

27 (2) Direct that the proposed amendment be submitted for
28 consideration at either an annual or a special meeting of the stockholders.

29 (d) (1) Notice which states that a purpose of the meeting will be to act on
30 the proposed amendment shall be given by the corporation in the manner required by
31 Subtitle 5 of this title to:

1 (i) Each stockholder entitled to vote on the proposed
2 amendment; and

3 (ii) Each stockholder not entitled to vote on the proposed
4 amendment if the contract rights of his stock, as expressly set forth in the charter,
5 would be altered by the amendment.

6 (2) The notice shall [include]:

7 (I) **INCLUDE** a copy of the amendment or a summary of the
8 changes it will effect; **OR**

9 (II) **1. IDENTIFY A WEBSITE AT WHICH THE AMENDMENT**
10 **OR A SUMMARY OF THE CHANGES IT WILL EFFECT MAY BE ACCESSED; AND**

11 **2. INCLUDE A TELEPHONE NUMBER OR AN ADDRESS**
12 **WHERE THE STOCKHOLDER MAY REQUEST A PAPER COPY OF THE AMENDMENT**
13 **OR SUMMARY WITHOUT CHARGE.**

14 (e) The proposed amendment shall be approved by the stockholders of the
15 corporation by the affirmative vote of two thirds of all the votes entitled to be cast on
16 the matter.

17 3-413.

18 (a) [Stockholders] **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**
19 **SECTION, STOCKHOLDERS** entitled to cast at least 25 percent of all the votes entitled
20 to be cast in the election of directors of a corporation may petition a court of equity to
21 dissolve the corporation on grounds that:

22 (1) The directors are so divided respecting the management of the
23 corporation's affairs that the votes required for action by the board cannot be obtained;
24 or

25 (2) The stockholders are so divided that directors cannot be elected.

26 (b) [Any] **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**
27 **ANY** stockholder entitled to vote in the election of directors of a corporation may
28 petition a court of equity to dissolve the corporation on grounds that:

29 (1) The stockholders are so divided that they have failed, for a period
30 which includes at least two consecutive annual meeting dates, to elect successors to
31 directors whose terms would have expired on the election and qualification of their
32 successors; or

1 (2) The acts of the directors or those in control of the corporation are
2 illegal, oppressive, or fraudulent.

3 (c) Any stockholder or creditor of a corporation other than a railroad
4 corporation may petition a court of equity to dissolve the corporation on grounds that
5 it is unable to meet its debts as they mature in the ordinary course of its business.

6 (D) SUBSECTIONS (A)(2) AND (B)(1) OF THIS SECTION DO NOT APPLY TO
7 ANY CORPORATION THAT HAS A CLASS OF EQUITY SECURITIES REGISTERED
8 UNDER THE FEDERAL SECURITIES EXCHANGE ACT OF 1934.

9 3-702.

10 (a) (1) [Control] **HOLDERS OF CONTROL** shares of the corporation
11 acquired in a control share acquisition have no voting rights **WITH RESPECT TO THE**
12 **CONTROL SHARES** except to the extent approved by the stockholders at a meeting
13 held under § 3-704 of this subtitle by the affirmative vote of two-thirds of all the votes
14 entitled to be cast on the matter, excluding all interested shares.

15 (2) A charter provision permitted by § 2-104(b)(5) of this article may
16 not apply to the proportion of votes required by paragraph (1) of this subsection.

17 8-601.1.

18 Sections 2-201(c), 2-313, 2-405.1(d) through (g), 2-502(e), and 2-504(f) of this
19 article shall apply to real estate investment trusts.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 June 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.